


Settling PAGA-only cases can involve a host of challenges.



Hon. Wynne Carvill (Ret.) of JAMS tackles the key issues in this article.

□ NEWS

Immigration

Bookmark

Mar. 26, 2020

Immigration lawyers say lives at risk

Some lawyers say they have become so frustrated that immigration courts have not closed during the coronavirus pandemic that they might sue the U.S. Department of Justice.

Some lawyers say they have become so frustrated that immigration courts have not closed during the coronavirus pandemic that they might sue the U.S. Department of Justice.

"If it means litigation we'll do it, but hopefully we can avoid that," said Jesse Bless, director of federal litigation at the American Immigration Lawyers Association.

"While we're hoping our diplomatic efforts bring the Executive Office for Immigration Review to a more reasonable position on the closure of immigration courts, I am working with many litigation partners to prepare contingency plans to force the issue," Bless said.

Immigration lawyers and the union for immigration judges, which are employees of the U.S. Justice Department, have clashed with U.S. Attorneys General Jeff Sessions and William Barr, since the start of President Donald J. Trump's administration. They have objected to quotas imposed on judges to speed up asylum cases among other complaints. Now, although the lawyers association said the attorney general is jeopardizing lives keeping the immigration courts running,

Yet, the group said it is worried a successful lawsuit to close the courts would trigger other impacts they don't support.

"In making a push for closure, any litigation must ensure that those most vulnerable stay safe and are afforded due process," Bless said.

Nationwide, eight immigration courts have closed for precautionary measures due to COVID-19, but all detained cases are proceeding as usual, according to the Executive Office of Immigration Review. All hearings for people with Migrant Protection Protocol master calendar and merit hearings scheduled through April 22 will be rescheduled due to COVID-19, and all non-detained hearings scheduled through April 10 have been postponed, the EOIR announced. Additionally, there is no requirement that documents be filed in person, according to the agency.

Six other courts, including the Olive Street location in Los Angeles, is reopen for filings only, which parties could do remotely. Sacramento is also open for filings only. Two other Los Angeles locations remained open for hearings of detained people. Otay Mesa, San Diego, San Francisco and Adelanto also remain opened for hearings according to the EOIR.

Laura Lynch, senior policy counsel for the American Immigration Lawyers Association, said the rules put all lawyers, court staff and judges in the position of having to choose to compromise their health and that of their families or fulfill an ethical and legal obligation to do their jobs.

U.S. District Courts however, have not yet been ordered to close as state courts have. While most in California have closed, urgent matters like criminal proceedings are moving forward but are being held telephonically if possible. All trials have been postponed. The Justice Department has not provided a justification for keeping immigration courts open, said Lynch, "making it clear this administration is prioritizing deportations over public health and safety."

The Department of Justice nor the Executive Office of Immigration Review could be reached for comment. ICE recently updated rules on its website to require attorneys to supply their own personal protective equipment, such as gloves, N-95 masks and eye protection goggles, if they wish to meet with a detainee at a facility if non-contact legal visitation is unavailable.

Lynch criticized the guidelines, pointing out there is a national shortage of such personal protective equipment for medical professionals and hospitals.

Fanny Behar-Ostrow, assistant chief counsel with the Department of Homeland Security's Office of the Principal Legal Advisor in Miami, and president of the American Federation of Government Employees Local 511, agreed immigration courts should be closed.

"ICE trial lawyers are desperate. They don't know what to do, and I've been pleading with my own agency to at least let them appear remotely," she said. "Up until Monday we still had to be in courtrooms in person as a requirement. I've been hearing from attorneys all over the nation telling me how scared they are. It makes no sense because when we had the federal government shutdown, a lot of us were sent home."

While government employees must appear in court if the Executive Office of Immigration Review remains open, the Office of the Principal Legal Advisor headquarters recently authorized field attorneys to appear telephonically for proceedings through May 22, she said. However, not all

department employees have been told, she said.

"It's not perfect. We want total closure, but it's at least giving us the option to avoid traveling to the courthouse and exposing others," Behar-Ostrow said. "But we haven't seen anything official come across our desk. Some of us are allowed to appear telephonically but we're hearing that some are not. We want all courts shuttered." It's not the same for some private lawyers, who said they are confused as to what the rules are for client visitations at detention facilities and for courtroom appearances.

Lisa Pickering, attorney at the Law Offices of David M. Sturman in Encino, attended a hearing Tuesday in Adelanto for a master calendar appearance and detainer case. She said she was unaware of a standing order Adelanto immigration court issued allowing telephonic appearances for master calendar or bond hearings. That order was issued March 19.

"It's not really clear what's going on," Pickering said. "The other problem is, you can do telephonic appearances but you still have to submit documents beforehand, which could delay the hearing."

Pickering said she showed up to court Tuesday wearing protective gear, but didn't see anyone else wearing anything, including the judge. She has a detention trial hearing Thursday in Adelanto again, with an expert witness testifying over the phone.

"Is it safe? Why are these courts still open? It's risking everyone's health," Pickering said.

Bless said there is no nationwide telephonic hearings established. So far, the administration hasn't granted flexibility to allow anything other than in-person hearings, he added. Detention hearings are still being done in-person, and not by phone, Bless said.

"Unless they have the technology set up then it's not possible because you need an interpreter, the phone set up for the party," Bless said. "I've had bond hearings in Boston where the attorneys are in court, but the detainee is on video. The agency seems to be making up rules by the minute. It's tough to get a good sense of what the policy is every day. There are courts shut down in New Jersey mid-day because someone tested positive for the virus, some were re-opened, they're announcing policies via Twitter. That's why we're moving closer and closer toward litigation. They should grant everyone 30-day continuance until they have a blanket plan, but allow those willing to go forward to do so."

On Tuesday, a federal lawsuit was filed in the Northern District of California on behalf of 13 immigrants in two ICE detention centers in Yuba County Jail and Mesa Verde in Bakersfield, demanding their immediate release.

The lawsuit, filed by the American Civil Liberties Union Foundations of Northern California and Southern California, allege the 13 plaintiffs with underlying medical conditions are especially vulnerable to the virus while confined in crowded, unsanitary spaces where social distancing is impossible. Sofia Bahena Ortuno et al v. David Jennings, U.S. Immigration and Customs Enforcement, et al 3:20-CV-02064 (N.D. Cal., filed Mar. 24, 2020). The ACLU is joined in its lawsuit by the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, the San Francisco public

defender's office and Lakin & Wille LLP.

ICE spokesperson Danielle Bennett said Wednesday the agency would not comment on pending litigation, but pointed to ICE's website where CDC guidelines for responding to coronavirus issues are posted. The website states that comprehensive protocols are in place for the protection of staff and patients, including use of personal protective equipment in accordance with guidance from the Centers for Disease Control and Prevention. New detainees are screened and those with symptoms consistent with coronavirus are quarantined and closely monitored, the website states. Andrew K. Nietor, founder of the Law Office of Andrew K. Nietor in San Diego, said the biggest problem is inconsistency across the board.

"The immigration court is within the facility so it doesn't make sense we're required to have protective equipment to go see a client in the same building as the immigration court," he said. "There are no clear guidelines put out by EOIR about changes in policy for requesting remote appearances, and it's putting everyone's health at risk."

#356939

Gina Kim

Daily Journal Staff Writer
gina_kim@dailyjournal.com

For reprint rights or to order a copy of your photo:

Email jeremy@reprintpros.com for prices.

Direct dial: 949-702-5390

Send a letter to the editor:

Email: letters@dailyjournal.com



JAMS Intellectual Property Practice Group
Effective ADR options
Extensive IP expertise
LEARN MORE ►



Proactive ADR in an unpredictable world.
LEARN MORE ►

Local Solutions.
Global Reach.™





ADR Services, Inc. Proudly Welcomes
David B. Casselman, Esq.
Mediator • Arbitrator



© 2020 DAILY JOURNAL CORPORATION. ALL RIGHTS RESERVED. | [FEEDBACK](#) | [ADVERTISE WITH US](#) | [PRINTING SERVICES](#) | [PRIVACY](#) | [USER AGREEMENT](#) | [SEC](#) | [XBRL](#) | [ABOUT](#) | [SUBMIT](#)